

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of

Improving Public Safety Communications in  
the 800 MHz Band

Consolidating the 900 MHz Industrial/Land  
Transportation and Business Pool Channels

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WT Docket No. 02-55

To: The Commission

**REPLY COMMENTS OF  
PREFERRED COMMUNICATION SYSTEMS, INC. UPON  
COMMENTS ON THE SUPPLEMENTAL COMMENTS OF THE  
SO-CALLED “CONSENSUS PARTIES”**

Preferred Communication Systems, Inc. (“Preferred”), on behalf of itself and its affiliates, hereby submits its Reply Comments upon the various comments submitted regarding the “Supplemental Plan” submitted by the self-described “Consensus Parties” (the “Nextel Group”). The vast majority of commenters agree with Preferred – the supporters of the Supplemental Plan are no consensus at all, and the vast majority of affected licensees oppose the Supplemental Plan.

**SUMMARY**

The Nextel Group’s cost estimates for relocation, even assuming there were no relocation costs other than the limited categories they recognize, are ridiculously low, meaning that the contemplated relocation of Public Safety will never take place, because the money will run out after the incumbent SMR licensees are relocated and Nextel takes their spectrum “temporarily.”

The Supplemental Plan is a *sub rosa* means for Nextel to fill out its 800 MHz footprint by stealing that spectrum from competitors under the guise of assisting Public Safety. As such, it is

contrary to the public interest, and if the Commission were to adopt it, it would not withstand judicial scrutiny.

This record does not contain a sufficient factual basis to justify substantial and disruptive forced relocation of thousands of innocent licensees.<sup>1</sup> If, *arguendo*, such massive forced relocation were justified, then in its February 10 Comments herein, Preferred presented an alternative plan that at least has the merit of being balanced and fair, as opposed to the Supplemental Plan, which constitutes a taking from all other SMR licensees in order to deliver a windfall gift to Nextel.

## **DISCUSSION**

### **I. The Costs of Massive Forced Relocation Are Far Higher Than the Nextel Group Pretends**

Preferred concurs with the majority of commenters that the cost estimates contained in the supplemental Plan are ridiculously low.<sup>2</sup> Under any reasonable estimate, even if the cost categories eligible for reimbursement were limited to those included by the Nextel Group, the cost will be far above one billion dollars, and probably two billion dollars. However, the Nextel Group has failed to consider all cost categories that would have to be included under Due Process Clause of the Fifth Amendment of the US Constitution, such as reimbursement for loss of subscribers due to churn<sup>3</sup> and reimbursement for replacing one type of spectrum with a far different, less flexible and less valuable spectrum.<sup>4</sup>

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<sup>1</sup> See, e.g., Comments of Access Spectrum, LLC (“Access”) at p.5; Comments of United Telecom Council (“UTC”) at pp.4-6; Comments of Consumers Energy, Inc. (“CEI”) at pp.4-5.

<sup>2</sup> See, e.g., Comments of Small Business in Telecommunications (“SBT”) at pp.2-5; Comments of Mobile Relay Associates (“MRA”) at pp.12-13; CEI Comments at p.19.

<sup>3</sup> See, e.g., MRA Comments at pp.11-12; Comments of the American Mobile Telecommunications Ass’n. (“AMTA”) at p.2.

<sup>4</sup> See, e.g., MRA Comments at pp.9-10; AMTA Comments at pp.3-5.

## **II. The Supplemental Plan Is an Unlawful Spectrum Grab**

Many commenters emphasize that the Supplemental Plan has become a blatant attempt by Nextel to grab two virgin chunks of nationwide spectrum in return for far less valuable spectrum in other bands, often containing protected incumbents or other regulatory restrictions, all without having to engage in an auction as required by Section 309(j) of the Communications Act of 1934 as amended (“Act”), 47 U.S.C. Section 309(j).<sup>5</sup> To emphasize, the Supplemental Plan proposes to achieve for Nextel the equivalent of Nextel having: a) won every single license in Auction No. 34; and b) bought out every single incumbent site-based licensee in channels 1-120 – all without Nextel having had to be the high bidder for the licenses it did not acquire at auction, and without having to pay displaced incumbents anything more than part of their retuning and/or mobile unit replacement costs.

Such a scheme is both unlawful *per se* and overwhelmingly disruptive to current licensees, both geographic-based and site-based. And the Nextel Group proposes that the Commission mandate such a scheme without there being any assurance that harmful interference to Public Safety would be materially ameliorated.

## **III. The Supposed Relocation Fund Is a Mirage**

Preferred agrees with those commenters who note that even if the paltry \$850 million promised by Nextel were sufficient to cover all relocation and other reimbursement costs, the funds are not there under the Supplemental Plan. As CTIA notes: “Nextel is using an installment-type mechanism to make a 3% down payment on its pledge – in essence receiving more than a billion dollars worth of spectrum for only a \$25 million initial payment.” CTIA Comments at p.8. As MRA notes, were Nextel to file for Chapter 11 protection under the Bankruptcy Code, Section 525 of that Code would

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<sup>5</sup> See, e.g., Access Comments at pp.13-18; Comments of Verizon Wireless (“Verizon”) at pp.11-14; Comments of the Cellular Telecommunications & Information Ass’n. (“CTIA”) at pp.15-17; MRA Comments at p.9.

prevent the Commission from canceling Nextel's pledged licenses for nonpayment into the "Relocation Fund", and, like Metro PCS before it, Nextel could eventually keep the spectrum and emerge from bankruptcy without ever having to finish meeting its funding obligations. MRA Comments at pp.15-17. *See also* Verizon Comments at p.9.

### **CONCLUSION**

The Supplemental Plan is completely contrary to the goals set forth by this Commission when it initiated this proceeding. It maximizes disruption for the myriad innocent SMR licensees, geographic-based and site-based alike, that compete with Nextel. It has no viable mechanism for ensuring that it can even be carried out. If carried out, there is no reason to believe it would do very much to ameliorate harmful interference to Public Safety. In addition, Section 309(j) of the Act expressly prohibits the Commission from doing what the Supplemental Plan proposes.

Accordingly, the Commission should reject the Supplemental Plan, and use one of the superior proposals put forth by other commenters as the basis for any action to relieve current harmful interference that Nextel is causing in the 800 MHz band.

Respectfully submitted,

**Preferred Communication Systems, Inc.**

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